



**AGREEMENT NUMBER #CT2877**

**FOR THE DEVELOPMENT AND IMPLEMENTATION OF  
THE IOWA REHABILITATION SERVICES SYSTEM (IRSS)**

**BETWEEN**

**IOWA DEPARTMENT OF EDUCATION,  
DIVISION OF VOCATIONAL REHABILITATION SERVICES (DVRS)**

**AND**

**QUILOGY, INC.**

party;

**2.5.5** Is publicly available or in the public domain at or prior to the time such information was disclosed by the disclosing party;

**2.5.6** Is independently developed by the receiving party without any reliance on Confidential Information disclosed by the disclosing party;

**2.5.7** Is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or

**2.5.8** Is disclosed by the receiving party with the written consent of the disclosing party.

**2.6 "Defect"** means a lack of something essential or necessary for completeness or functionality of a Deliverable, or a fault, flaw, anomaly, or a significant problem with respect to a Deliverable. Defect includes any flaw or deficiency with respect to a Deliverable that: (1) deprives DVRS of a key benefit that DVRS reasonably expected or (2) causes disruption or harm to, or otherwise adversely affects: (i) DVRS' use of the Deliverable or IRSS or (ii) DVRS' ability to conduct business or provide services to its clients.

**2.7 "Deficiency"** means a Defect or any failure of a Deliverable to conform to or meet an applicable Specification or applicable Acceptance Criteria.

**2.8 "Deliverables"** mean services, Software, goods and materials to be provided by, or on behalf of, Quilogy pursuant to this Agreement. Unless otherwise expressly provided in this Agreement, Deliverables shall include any and all Documentation, designs, copy, artwork, data, information, graphics, images, processes, techniques, materials, plans, papers, forms, reports, studies, source code, object code, modifications, content, concepts, and all other tangible and intangible works, materials and property of every kind and nature that are related to the Deliverables.

**2.9 "Documentation"** means all technical information as specified in the Statements of Work, commentary, design documents, code and test materials, training materials and guides, manuals, worksheets, system performance benchmarks, system architecture, maintenance and operations manuals, and all other information, documentation and materials that are related to or used in conjunction with the Deliverables and IRSS (excluding Quilogy's internal project notes that only record the time or hours expended by Quilogy's employees on the Project).

**2.10 "ITE"** means the Information Technology Enterprise, a division within the State of Iowa, Department of Administrative Services.

**2.11 "Mandatory General Requirements"** means, the performance requirements and other requirements specified in this Agreement (see Schedule A) or in Change Orders that Quilogy must meet or satisfy for each phase of the Project.

**2.12 "Project"** means the analysis, design, development, conversion services, implementation services, performance and payment milestones, and other services associated with the Deliverables to be performed and provided by Quilogy as described in this Agreement.

**2.13 "Project Completion Date"** means the date by which Quilogy shall deliver, install and complete all work and provide all Deliverables pursuant to each Statement of Work.

**2.14 "Project Plan"** means the Project Plan, as defined by activities, start and stop dates, projected work effort to complete these activities, and resources assigned to the activities. This Project Plan can be modified from time to time upon written agreement of the parties. The Project Plan, as it pertains to Phase One shall be included in the Statement of Work for Phase One, and the Project Plan as it pertains to Phase Two shall be included in the Statement of Work for Phase Two.

appendices, exhibits and any other factors or information as agreed upon by the parties.

Phase One of IRSS shall include the Client Services and Financial Services process families and preparation of a SOW for Phase Two. The Statements of Work for Phase One and for Phase Two shall each include a detailed Project Plan prepared by Quilogy using Microsoft Project. The parties shall review and agree on the Deliverables, specific activities, milestones, delivery dates, Specifications, compensation, and any additional, respective responsibilities of the parties for each Statement of Work.

It is the intent of both Quilogy and DVRS that, upon Acceptance by DVRS of the SOW for Phase One, the development and implementation of IRSS will commence in accordance with the terms and conditions set forth in this Agreement, and the Phase One SOW.

At the sole discretion of DVRS, Quilogy shall develop and implement Phase Two of the IRSS project in accordance with the terms and conditions set forth in this Agreement. Phase Two of IRSS includes, among other things, the Financial Management, Vendor Management, and Contract Management process families.

Prior to the implementation of Phase one, Quilogy will submit a detailed list and resumes of personnel proposed to be assigned to implement Phase One of the Project for review and approval by DVRS. To the extent DVRS does not approve of a proposed Quilogy or Microsoft staff person's qualifications, Quilogy will propose another staff person.

**4.2 Amendments to Statement of Work and Specifications.** The parties agree that a Statement of Work may be amended, in writing, at any time during the term of this Agreement by mutual written consent of the parties, including through execution of a Change Order.

**4.3 Other Services.** DVRS may offer to engage and retain Quilogy to provide other services related to the System, including maintenance, support, training, development, and enhancements under this Agreement, pursuant to a separate Statement of Work or an amendment to this Agreement.

## **Section 5. Compensation and Additional Rights and Remedies.**

**5.1 Compensation.** In consideration of Quilogy providing DVRS with the Deliverables in accordance with the terms and conditions of this Agreement, Quilogy shall be entitled to receive the fees or other compensation associated with such Deliverables as specified herein or in a SOW, subject to all terms and conditions of this Agreement, including, Section 5.2 (Invoices) and Section 5.3 (Retention). Upon completion and Acceptance of the Phase One Statement of Work, DVRS shall pay Quilogy Thirty-nine Thousand and Thirty-five Dollars (\$39,035) in accordance with and subject to all terms and conditions of this Agreement. For all other Deliverables, the fees, costs or other compensation associated with such Deliverables shall be specified in detail in each Statement of Work. Hourly labor rates for Quilogy staff and Microsoft staff shall not exceed the blended rate of \$90 / hour and \$190 / hour, respectively. All fees and compensation payable hereunder to Quilogy with respect to Phase One and Phase Two shall be on a firm, fixed, not-to-exceed basis. The total cost to DVRS for Phase One shall be \$1,200,000 and the total cost for Phase Two shall be \$750,000 regardless of the total hours expended by Quilogy for these two phases. In no event shall DVRS be obligated to pay Quilogy any fees, costs, compensation or other amounts in excess of: (1) the amount specified in a SOW for any one or more Deliverables; and (2) \$1,200,000 for Phase One and \$750,000 for Phase Two, unless DVRS otherwise agrees to pay additional compensation for Phase One or Phase Two pursuant to a written Change Order or an amendment to this Agreement executed by Quilogy and DVRS. No payment, including final payment, shall be construed as Acceptance of defective Deliverables or incomplete work, and Quilogy shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. No advance payments shall be made for any Deliverables provided by Quilogy pursuant to this Agreement.

**5.2 Invoices.** Upon receipt of Acceptance from DVRS with respect to one or more Deliverables, Quilogy shall submit an invoice to DVRS requesting payment of the fees or other compensation specified in the SOW with respect to such Deliverables, less the retained amounts to be withheld in accordance with Section 5.3. All invoices submitted by Quilogy shall contain appropriate

**5.10 Monitoring and Review.** DVRS shall monitor and review Quilogy's performance under this Agreement to ensure compliance with this Agreement and output and quality measures. Such review and monitoring shall include DVRS's assessment of invoices and reports furnished by Quilogy pursuant to this Agreement.

## **Section 6. Acceptance Tests, Project Management, and Key Personnel.**

**6.1** Quilogy shall commence work under this Agreement and complete all phases and aspects of work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions, Specifications and other requirements specified in this Agreement, the Statements of Work, the Project Plan, and fully executed Change Orders.

**6.2** All Deliverables shall be subject to DVRS's Acceptance Testing and Acceptance unless otherwise provided in a SOW. Upon completion of all phases and aspects of work to be performed by Quilogy with respect to any Deliverable, Quilogy shall deliver a written notice to DVRS indicating that the Deliverable is in the required format and ready for DVRS to conduct Acceptance Tests; provided, however, that Quilogy shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to DVRS.

The dates by which Quilogy shall be required to provide notice to DVRS that Deliverables are ready for Acceptance Testing shall be explicitly named as milestones in the Statement of Work and/or the Project Plan. At DVRS's request, Quilogy shall assist DVRS in performing Acceptance Testing at no additional cost to DVRS. Within a reasonable period of time after DVRS has completed its Acceptance Testing, DVRS shall provide Quilogy with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If DVRS concludes that a Deliverable satisfies applicable Acceptance Criteria and DVRS' Acceptance Tests, DVRS shall provide Quilogy with notice of Acceptance with respect to such Deliverable. If DVRS concludes that a Deliverable fails to satisfy applicable Acceptance Criteria or DVRS' Acceptance Tests, DVRS shall provide Quilogy with notice of Non-acceptance with respect to such Deliverable. In the event DVRS provides notice of Non-acceptance to Quilogy with respect to any Deliverable, Quilogy shall correct and repair such Deliverable and submit it to DVRS within ten (10) days of Quilogy's receipt of DVRS' notice of Non-acceptance so that DVRS may re-conduct its Acceptance Tests with respect to such Deliverable. In the event DVRS determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Quilogy has attempted to correct or repair pursuant to this Section 6.2, that such Deliverable fails to satisfy applicable Acceptance Criteria or DVRS' Acceptance Tests, then DVRS shall have the continuing right, in its sole discretion to: (i) require Quilogy to correct and repair such Deliverable within such period of time as DVRS may specify in a written notice to Quilogy, (ii) refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable); (iii) accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to DVRS's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs incurred by DVRS to correct such Deficiencies, including any costs or fees incurred as a result of retaining Third Party professional services; or (iv) terminate this Agreement and/or obtain and seek any and all available rights and remedies, including damages. Notwithstanding the provisions of Section 10 of this Agreement, DVRS may terminate this Agreement pursuant to this Section 6.2 without providing Quilogy with any further or additional notice or opportunity to cure. DVRS's right to exercise the foregoing rights and remedies, including termination of this Agreement, shall remain in effect until Acceptance Tests are successfully completed to DVRS's satisfaction. If DVRS concludes, in its sole discretion, that all Deliverables in Phase One or Phase Two satisfy DVRS's Acceptance Tests or otherwise satisfy DVRS in its sole discretion, DVRS shall provide Quilogy with notice of Final Acceptance with respect to such Deliverables.

## **6.3 Project Management and Reporting.**

shall be followed:

**6.3.6.1 Written Request.** The Party requesting the Change Order shall specify in writing the desired modifications to the same degree of specificity as in the original Statements of Work.

**6.3.6.2 Change Order Meeting.** The parties shall schedule a regular meeting time to discuss all "open" Change Orders. The originating party will present the change, describe its relevance, and present the business/technical need for the change along with a high level initial estimate of hours, cost and schedule impact.

**6.3.6.3 Response.** Quilogy shall submit a firm cost and time proposal and any proposed modifications to the Project Plan for the requested Change Order within five (5) business days after receiving DVRS' Change Order request, or such longer period as the parties may agree. The parties agree that the hourly rate for labor for all work done pursuant to Change Orders shall not exceed the blended hourly rates set forth in Section 5.1.

**6.3.6.4 Acceptance.** If DVRS accepts the firm proposal submitted by Quilogy, the parties shall sign and fully execute a Change Order. Quilogy shall perform the modified services, provide the specified Deliverables and fulfill any other requirements as stated in the Change Order. All terms and conditions of this Agreement will apply to such services and Deliverables and DVRS' payment for such services and Deliverables, unless otherwise expressly agreed to by both parties in the Change Order.

**6.4 Key Personnel.** For Phase One, DVRS considers DVRS' Project Principal, Project Manager, business analyst, and data architect approved by DVRS to be essential to a successful project. Quilogy shall not remove, reassign or substitute the individual(s) identified in these positions for Phase One or Phase Two without DVRS' prior written consent. Quilogy shall not remove, reassign or substitute the individual(s) identified in this section except in the event of death, illness, retirement, disability, or termination from employment, conditions permitting absence from employment under the Family and Medical Leave Act of 1993, or in the event of DVRS's written consent. If at any time during the term of this Agreement, DVRS becomes dissatisfied with the performance of any individual who is part of Quilogy's or Microsoft's personnel, DVRS shall notify Quilogy of the reasons for such dissatisfaction and may request the replacement of such individual. Quilogy will promptly investigate such request and the reasons for such dissatisfaction and report back to DVRS on the corrective action Quilogy believes is appropriate to address DVRS's concerns and dissatisfaction. If the parties determine that such individual needs to be replaced, Quilogy shall replace such individual with a substitute individual having equal or greater ability, experience and qualifications than the departing individual.

## **6.5 Liquidated Damages.**

**6.5.1** Quilogy shall pay as liquidated damages \$25,000 each time Quilogy removes, reassigns or substitutes a person identified in Section 6.4 in violation of that section. Quilogy acknowledges that such damages are reasonable and do not constitute a penalty or forfeiture.

**6.5.2** The assessment of liquidated damages shall not constitute a waiver or release of any other remedy DVRS may have under this Agreement for Quilogy's breach of this Agreement, including without limitation, DVRS's right to terminate this Agreement, and shall be entitled in its discretion to recover actual damages caused by Quilogy's failure to perform any of its obligations under this Agreement. However, DVRS will reduce such actual damages by the amounts of any liquidated damages received for the same events causing the actual damages. The assessment of liquidated damages shall be in addition to and not in lieu of such other remedies as may be available to DVRS. It is expressly agreed that the waiver of any liquidated damages due DVRS shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated or other damages. Any failure by DVRS to

exercise of any rights with respect to, any Deliverable may give rise to a claim of infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim arises, or in DVRS' opinion is likely to arise, then Quilogy shall, upon the request of DVRS : (i) procure for DVRS the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of infringement or misappropriation; (iii) modify or replace the affected Deliverable with a functionally equivalent or superior Deliverable free of infringement or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to DVRS all fees, charges or other amounts paid with respect to such Deliverable. Quilogy agrees to indemnify, defend, protect and hold harmless DVRS and the State and their officers, directors, employees, officials and agents as provided in the indemnification section of this Agreement with respect to any claim, litigation or action that is based on a claim of infringement, misappropriation or violation of an intellectual property right, proprietary right, personal right or trade secret related to the Deliverables. The foregoing remedies shall be in addition to and not exclusive of other remedies available to DVRS and shall survive termination of this Agreement.

**8.5** Quilogy agrees that all Deliverables, including, without limitation, all patents, copyrights, inventions, trade secrets and all other intellectual property rights and proprietary rights therein or related thereto, shall become and remain the sole and exclusive property of DVRS. Quilogy hereby irrevocably transfers, assigns and conveys all right, title and interest in and to such Deliverables and all intellectual property rights and proprietary rights therein or related thereto to DVRS. Quilogy represents and warrants that DVRS shall acquire good and clear title to such Deliverables, free from any claims, liens, security interests, encumbrances or other rights or interests of Quilogy or of any Third Party. Quilogy further represents and warrants that no Third Party, including Microsoft Corporation and its subsidiaries and affiliates, will own or reserve or retain any interest whatsoever in any Deliverables, and that DVRS shall be the sole owner of all Deliverables. Quilogy shall take all actions as may be necessary or requested by DVRS to irrevocably transfer, assign and convey such Deliverables and all intellectual property rights and proprietary rights therein and related thereto to DVRS. DVRS shall have the right to obtain and hold copyrights, patents or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. Quilogy shall assist the DVRS to obtain or perfect copyrights, patents or other intellectual property rights, registrations or protections with respect to all such Deliverables in the United States and any other countries. Quilogy agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to DVRS all the right, title and interest in and to such Deliverables. Quilogy also agrees to waive and not assert any moral rights it may have with regard to such Deliverables. Quilogy and its contractors and subcontractors (including Microsoft Corporation and its subsidiaries and affiliates) shall not retain any property interests or other rights in and to such Deliverables and shall not use such Deliverables, in whole or in part, for any purpose, without the prior written consent of DVRS and the payment of such royalties or other compensation as DVRS deems appropriate. As the sole owner of all Deliverables, DVRS may, among other things: (i) adapt, change, modify, edit or use the Deliverables as DVRS sees fit, including in combination with the works of others, prepare derivative works based on the Deliverables, and publish, display and distribute throughout the world any Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium, and (ii) make, use, sell, assign, license, sublicense, or lease the Deliverables and any/or intellectual property rights therein or related thereto without payment of additional compensation to Quilogy or any Third Party.

**8.6** Quilogy represents, warrants and covenants that all services to be performed under this Agreement shall be performed in a professional, competent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as DVRS notifies Quilogy of any services performed in violation of this standard, Quilogy shall re-perform the services at no cost to DVRS, such that the services are rendered in the above-specified manner, or if Quilogy is unable to perform the services as warranted, Quilogy shall reimburse DVRS any fees paid to Quilogy for the unsatisfactory services.

**8.7** Quilogy represents, warrants and covenants that it has complied with, and shall comply with, all

**9.2** Quilogy's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by DVRS or any other Indemnatee.

**9.3** DVRS will reasonably cooperate with Quilogy to facilitate the defense of any action defended by Quilogy. DVRS and the State reserve the right to participate in the defense of any such action.

**9.4** Quilogy shall be liable for any personal injury or damage to property caused by the fault or negligence of Quilogy, its officers, directors, employees, agents and approved contractors or subcontractors.

## **Section 10. Default and Termination.**

**10.1 Termination for Cause.** DVRS may terminate this Agreement upon written notice for the breach by Quilogy of any material term, condition or provision of this Agreement, if such breach is not cured within the time period specified in DVRS' notice of breach or any subsequent notice or correspondence delivered by DVRS to Quilogy, provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Quilogy may have for liquidated damages. Following expiration of the applicable cure period or notice from DVRS, DVRS may seek any available contractual, legal or equitable remedy. Quilogy may only terminate this Agreement upon written notice for the breach by DVRS of any material term, condition or provision of this Agreement, if such breach is not cured within 60 days of DVRS's receipt of Quilogy's written notice of breach. In addition, DVRS may terminate this Agreement effective immediately without advance notice and without penalty for any of the following reasons:

**10.1.1** Quilogy furnished any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;

**10.1.2** Quilogy becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws;

**10.1.3** Quilogy terminates or suspends its business;

**10.1.4** DVRS reasonably believes that Quilogy has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

**10.1.5** Quilogy has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;

**10.1.6** Quilogy has engaged in conduct that has or may expose DVRS or the State to liability, as determined in DVRS's sole discretion; or

**10.1.7** Quilogy infringes on any patent, trademark, copyright, trade dress or other intellectual property right or proprietary right, or Quilogy misappropriates a trade secret.

**10.2 Termination for Convenience.** Following thirty (30) days written notice, DVRS may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Quilogy. Termination for convenience can be for any reason or no reason at all. If DVRS terminates for convenience pursuant to this Section 10.2, Quilogy shall be entitled to receive compensation, as provided herein, for any services performed in accordance with the terms of this Agreement up to the date of termination. The parties shall mutually agree on the amount of compensation to which Quilogy is entitled, which compensation shall be equitably determined by the parties taking into account such factors as the functionality of incomplete Deliverables compared to the expected functionality of such Deliverables when complete, the percentage/degree of completion

**10.4.5** Any taxes Quilogy may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes;

**10.4.6** Any compensation, payments or other amounts that Quilogy is obligated to pay to any contractor or subcontractor of Quilogy, including Microsoft Corporation and its affiliates and subsidiaries.

**10.5 Quilogy's Termination Duties.** In the event of termination, Quilogy shall, at the request of DVRS:

**10.5.1** Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 30 days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as DVRS may require.

**10.5.2** Immediately cease using and return to DVRS any property (including, without limitation, DVRS Property) or materials, whether tangible or intangible, provided by DVRS to Quilogy.

**10.5.3** Cooperate in good faith with DVRS and its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement service provider.

**10.5.4** Immediately return to DVRS any payments made by DVRS for services or Deliverables that were not rendered or provided by Quilogy.

**Section 11. Insurance.**

**11.1 Insurance Policies.** Quilogy shall maintain in full force and effect, with insurance companies of recognized responsibility, at its expense, insurance covering its work of the type and in amounts required by this Agreement. Quilogy's insurance shall, among other things, insure against loss or damage resulting from Quilogy's performance of this Agreement. All such insurance policies shall remain in full force and effect for the entire term of this Agreement and shall not be canceled or changed without DVRS's prior written consent.

Unless otherwise requested by DVRS, Quilogy shall, at its sole cost, cause to be issued and maintained in effect during the entire term of this Agreement not less than the insurance coverage's set forth below each naming DVRS and the State of Iowa as an additional insured or loss payee, as applicable:

<i><b>Type of Insurance</b></i>	<i><b>Limit</b></i>	<i><b>Amount</b></i>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$3 million
	Prod./Comp.	
	Aggregate	\$1 million
Errors and Omissions Insurance	Personal injury	\$1 million
	Each Occurrence	\$1 million
	Each Occurrence	\$2 million
Property Damage	Each Occurrence	\$1 million
	Aggregate	\$1 million
Workers Compensation and Employer Liability	As Required by Iowa law	

**11.2 Claims Provision.** All insurance policies required by this Agreement must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.



**12.2.4** DVRS may consider the failure of Quilogy to comply with any law or regulation as a material breach of this Agreement.

**12.3 Confidentiality.** Quilogy and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by DVRS or the State ("DVRS Property") to the extent necessary to carry out its responsibilities under the Agreement. Such DVRS Property shall at all times remain the property of DVRS and/or the State. Quilogy shall preserve the confidentiality of DVRS Property disclosed or furnished by DVRS to Quilogy and shall maintain procedures for safeguarding such property. Quilogy must designate one individual who shall remain the responsible authority in charge of all DVRS Property collected, used, or disseminated by Quilogy in connection with the performance of the Agreement. Quilogy shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Quilogy and its employees, agents, and any approved contractors or subcontractors may be required by DVRS to execute confidentiality or non-disclosure agreements to obtain access to certain DVRS Property.

Quilogy and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any DVRS Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by DVRS to enable Quilogy to perform its obligations under this Agreement and except as authorized by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Quilogy agrees to return any and all DVRS Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of DVRS. In the event that Quilogy receives a request for access to any DVRS Property, Quilogy shall immediately communicate such request to DVRS for consideration and handling.

Quilogy shall indemnify DVRS, the State and all other Indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, DVRS may terminate this Agreement immediately without notice of default and opportunity to cure. Quilogy's obligations under this section shall survive expiration or termination of this Agreement.

**12.4 Amendments.** This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.

**12.5 Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit DVRS, the State and Quilogy.

**12.6 Choice of Law and Forum.** This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after termination hereof, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. However, if jurisdiction is not proper in the Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, provided that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability that may be available to DVRS. Quilogy: (i) hereby consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts, and (ii) by execution and delivery of this Agreement, submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal status thereof, generally and unconditionally, the jurisdiction of the aforesaid courts. Quilogy waives any and all rights and defenses it may have with respect to jurisdiction and forum. Quilogy consents to service of process by certified or registered mail addressed to Quilogy's designated agent. Quilogy appoints Corporation Service Company at 729 Insurance Exchange Building Des Moines, Iowa, 50309, as its agent to receive service of process. If for any reason Quilogy's agent for service is unable to act as such or the address of the agent changes, Quilogy shall immediately appoint a new agent and provide DVRS with written notice of the change in agent or address. Any change in the appointment of the

**12.11 Supersedes Former Agreements.** This Agreement supersedes all prior Agreements between DVRS and Quilogy for the goods and services provided in connection with this Agreement.

**12.12 Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of DVRS and Quilogy, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

**12.13 Notices.**

**12.13.1 Notices.** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to DVRS:

Department of Education, Division of  
Vocational Rehabilitation Services,  
Attn: Administrator  
510 E. 12<sup>th</sup> Street  
Des Moines, IA 50319

If to Quilogy:

Quilogy, Inc.  
Attn: Legal Department  
117 South Main  
St. Charles, MO 63301

**12.13.2** Any notice or communication sent by U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

**12.13.3** From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

**12.14 Cumulative Rights.** The various rights, powers, options, elections and remedies of DVRS and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed DVRS and the State by law, and shall in no way affect or impair the right of DVRS or the State to pursue any other contractual, equitable or legal remedy to which DVRS and the State may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged. The election by DVRS or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

**12.15 Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

**12.16 Time is of the Essence.** Time is of the essence with respect to Quilogy's performance of its

**12.25 Obligations of Joint Entities.** If Quilogy is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

**12.26 Force Majeure.**

**12.26.1** Neither Quilogy nor DVRS shall be liable to the other for any delay or failure of performance of this Agreement, and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure" and not as a result of the fault or negligence of a party.

**12.26.2** As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of Quilogy shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force Majeure" does not include financial difficulties of Quilogy or any parent, subsidiary, affiliated or associated company of Quilogy or claims or court orders that restrict Quilogy's ability to deliver the goods or services contemplated by this Agreement.

**12.27 Material Breaches.** The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

**12.28 Right of Inspection.** Quilogy shall upon reasonable notice allow DVRS, or anyone designated by DVRS, to inspect its facilities and books and records relating to invoicing and time records for the DVRS Project to monitor and evaluate performance of this Agreement.

**12.29 Taxes.** Quilogy shall be responsible for paying any taxes incurred by Quilogy in the performance of this Agreement. DVRS and the State are exempt from the payment of State sales and other taxes.

**12.30 Title to Property.** Title to all property, including, without limitation, DVRS Property, furnished by DVRS and/or the State to Quilogy to facilitate the performance of this Agreement shall remain the sole property of DVRS and/or the State. All such property shall only be used by Quilogy for purposes of fulfilling its obligations under this Agreement and shall be returned to DVRS upon the earliest of completion, termination, or cancellation of this Agreement or at DVRS's request. Quilogy acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Quilogy shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Quilogy, for which Quilogy has been reimbursed or paid by DVRS under this Agreement shall pass to and vest in the State, except as otherwise provided in this Agreement.


**12.31 Exclusivity.** This Agreement is not exclusive. During the term of this Agreement, DVRS may obtain similar services from other service providers.

**12.32 Award of Related Agreements.** DVRS may undertake or award supplemental or successor agreements for work related to this Agreement. Quilogy shall cooperate fully with other contractors, consultants and other persons who may be engaged by DVRS or the State in connection with this Agreement or with respect to any of the Deliverables. Quilogy will ensure that any of its contractors or subcontractors that have been approved by DVRS will abide by this provision.

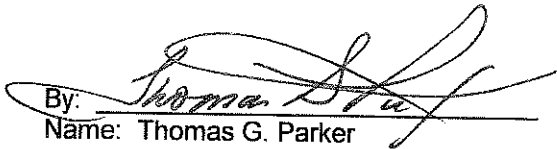
**12.33 Sovereign Immunity.** DVRS and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

Iowa Department of Education,  
Division of Vocational Rehabilitation Services

By:   
Name: Stephen A. Wooderson  
Title: Division Administrator  
Date: 5/11/04

Quilogy, Inc.

By:   
Name: Thomas G. Parker  
Title: General Manager  
Date: 5/11/04

**IN WITNESS WHEREOF**, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

**Iowa Department of Education,  
Division of Vocational Rehabilitation Services**

**Quilogy, Inc.**

By: \_\_\_\_\_  
Name: Stephen A. Wooderson  
Title: Division Administrator

By: \_\_\_\_\_  
Name: Thomas G. Parker  
Title: General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

4. The Contractor shall design, document, and obtain acceptance of data load exception handling rules including default values;
5. The Contractor shall design, document, and obtain acceptance of data editing and data validation rules;
6. The Contractor shall design, document, and obtain acceptance of application integration process;
7. The Contractor shall design, document, and obtain acceptance of narrative of the Phase One application and the flow of data from identified internal and external source databases to the IRSS database;
8. The Contractor shall design, document, and obtain acceptance of logical, physical and object data models (from existing data model) and corresponding entities, relationships, attributes and access paths using existing Detail Design logical data model;
9. The Contractor shall design, document, and obtain acceptance of a database architecture that has the capability to grow over subsequent phases;
10. The Contractor shall design, document, and obtain acceptance of user-interface screens (from existing prototype screens) resulting from additions and changes to user-defined business rules and logical data model;
11. The Contractor shall design, document, and obtain acceptance of user on-line help screen format that is consistent and applicable to all user-interface screens. Design must include, at a minimum, definition and purpose of screen, definition of each field on the screen, and search capabilities. On-line help information must be accessible from each user-interface screen; and
12. The Contractor shall design, document, and obtain acceptance of system specifications to meet the requirements of this RFP.

4. **SYSTEM DEVELOPMENT**

- a. The Contractor shall develop and obtain acceptance of the User Authentication Security Plan. The User Authentication Security Plan must include, at a minimum, the following elements:
  1. Require passwords for each user that will expire on a staggered schedule determined by the State that can be changed at any time by the user (or by appropriate State or contractor management personnel);
  2. Unique log-on for each user;
  3. Method of restricting of aggregate data level file/table, record/row, and field/attribute to specific users and/or groups of users with common access rights as specified by the State;
  4. Method of restricting of file/table, record/row, and field/attribute to specific users and/or groups of users with common access as specified by the State;
  5. The system must provide for hierarchical password protection, as well as a system-inherent mechanism for recording any change to a software module or subsystem; and
  6. Procedures for safeguarding the system from unauthorized modifications to the application programs and the data contained in the IRSS.
- b. The Contractor shall develop and obtain acceptance of guidelines and processes used to purge inactive/obsolete data;
- c. The Contractor shall develop and obtain acceptance of contract templates and data upload processes used to migrate offline data to IRSS database for each template;
- d. The Contractor shall develop and obtain acceptance of all pre-defined queries and reports;
- e. The Contractor shall develop and obtain acceptance of the application integration processes;
- f. The Contractor shall develop and obtain acceptance of a production database architecture that has the capability to grow over subsequent phases;

- c. The Contractor shall verify the accuracy of data files transferred from the internal and external data source(s) to the target databases and provide audit trail reports;
- d. The Contractor shall complete the Final Data Conversion;
- e. The Contractor shall develop and obtain acceptance of the data load results; and
- f. The Contractor shall recalculate the percentages of data storage utilized by using agency based on actual data storage usage for cost allocation purposes.

**7. TRAINING, DOCUMENTATION, AND IMPLEMENTATION**

- a. For the Training and Implementation Task, the contractor shall, at a minimum:
  - 1. Deliver onsite training;
  - 2. Certify training is completed; and
  - 3. Provide an electronic version of the formal, customized training classes and associated class documentation to the State.
- b. The Contractor shall develop complete system documentation for the development and implementation of the Client Services and Financial Services Process Families;
- c. The Contractor shall submit system documentation for State acceptance and modify as directed;
- d. The Contractor shall develop complete user documentation for the development and implementation of the Client Services and Financial Services Process Families;
- e. The Contractor shall submit user documentation for DVRS acceptance and modify as directed; and
- f. The Contractor shall develop and obtain acceptance of user manuals that shall, at a minimum:
  - 1. Be in a format that facilitates updating, including use of 8-1/2" x 11" pages in three-ring (3) binder form, pages numbered within each section, and a revision date on each page;
  - 2. Be available on-line via help screens with a DVRS acceptable formatted;
  - 3. Be written and organized so that users not trained in data processing can learn from reading the documentation how to access the system, perform queries, create reports and utilize contract templates and other tool sets available to them;
  - 4. Contain a table of contents and an index;
  - 5. Have descriptions of error messages and the necessary steps to correct such errors;
  - 6. Contain abbreviations, which are consistent throughout the documentation;
  - 7. Contain a section describing all pre-defined queries and reports; and
  - 8. Contain instructions for creating queries and reports.

**8. SYSTEM SUPPORT**

- a. All items delivered by the Contractor must meet the requirements, specifications and functions identified herein;
- b. The Contractor shall warrant "all" items of the delivered IRSS system to conform to Federal and State of Iowa laws, regulations, standards, and policies;  
The Contractor must warrant that the system and software delivered shall be free from defects and capable of accurately performing all IRSS requirements for one (1) year. During the one (1) year warranty period, the Contractor must correct errors and omissions discovered in the design, installation, implementation and operation of the IRSS system;
- d. The Contractor must warrant that the developed and delivered IRSS system shall not infringe any right of, and shall be free of any claim of any third party or entity based on patent, copyright, trade secrete, or other intellectual property right. This warranty shall survive termination of the contract;
- e. The Contractor shall be available on an as-needed basis via the phone or onsite depending on the severity of the issue requiring assistance; and
- f. Contractor shall acknowledge receipt of problem within a reasonable time period

## **2. State of Iowa Enterprise Security Policy.**

### **Knowledge Transfer**

**The Contractor must meet on a weekly basis, or more frequently at the DVRS's option, with the IRSS Project Steering Team and/or other designated DVRS staff;**

**The Contractor must participate in meetings with DVRS and ITE staff to confirm that the design approach, network connectivity and web-enablement will provide the system capabilities to satisfy the requirements;**

**The Contractor must request information with sufficient lead time as to not delay any part of the project schedule;**

**Conduct walk-through(s) of all task deliverables to facilitate the approval process;**

**The Contractor shall have knowledge and experience and shall utilize the software identified in Section 3.11 for the development of the IRSS application (Any other tools used to develop the application must be approved by the DVRS Project Manager);**

**The Contractor must utilize two DVRS application developers as part of the IRSS development team and provide sufficient knowledge transfer to ensure they become production in the development and ongoing support requirements necessary to maintain IRSS;**

**The Contractor shall ensure DVRS application developers are highly involved in all stages of development and implementation;**

**The Contractor shall maintain a productive environment for the DVRS application developers by allowing them to work directly with contractor technical staff during all stages of development and implementation; and**

**No portion of Phase I design and implementation shall be cause for Phase II design and implementation to be satisfactorily accomplished only by the successful bidder of this RFP.**

**Nothing in Phase I design and implementation shall limit competition in any subsequent competitive selection of a contractor for Phase II.**